

Moreover, as Wang's concedes in its brief, "comparisons between the parties' respective devices are ... proper where the patentee's design has no significant design differences from the physical embodiment."⁶ Also: *Braun, Inc. v. Dynamics Corp. of America*, 975 F.2d 815, 821 (Fed. Cir. 1992):

Nothing in *Gorham* suggests that, in finding design patent infringement, a trier of fact may not as a matter of law rely exclusively or primarily on a visual comparison of the patented design, as well as the device that embodies the design, and the accused device's design.

CONCLUSION

Hartco respectfully prays that its writ application be granted.

Respectfully submitted,

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⁶ Wang's Brief, pg. 21.

APPENDIX

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Serial Number: 29/061031

Art Unit: 2913

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Drawings

2. The drawing disclosure meets the requirements of 37 CFR § 1.84; however, the drawings are objected to as follows. Correction for consistency is required. See attached red marked drawings.

a. In Fig. 3, the outer rim as seen in Figs. 4-5 is not shown. Also in Fig. 3, the four circular features located in the interior corners of the hitch cover must be enlarged to match their relative size as shown in as-filed Fig. 3.

b. Figs. 4-5 show the outer rim of the hitch cover insert to be squared, rather than rounded as shown in the as-filed drawings.

c. New formal drawings are now required. Care should be exercised to avoid introduction of new matter (35 U.S.C. 132; 37 CFR 1.121).

Specification

3. For proper form (37 CFR 1.153), the claim has been amended to delete the word, [A] and to insert in its place the term: -- The ornamental --

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Rob Spear, whose telephone number is (703) 305-3056. The examiner can normally be reached Monday-Friday from 6:30 AM - 3:00 PM (EST). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, James Gandy, may be reached at (703) 305-3264. The fax numbers for this group are (703) 305-....